

AMENDED IN ASSEMBLY SEPTEMBER 10, 2009

AMENDED IN ASSEMBLY AUGUST 20, 2009

AMENDED IN ASSEMBLY JULY 6, 2009

AMENDED IN ASSEMBLY JUNE 23, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 483

Introduced by Senator Corbett
(Principal coauthor: Senator Wright)
(Principal coauthor: Assembly Member Torrico)

February 26, 2009

~~An act to add Section 7073.5 to the Government Code, relating to economic development, and declaring the urgency thereof, to take effect immediately. An act to add Section 23606 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 483, as amended, Corbett. ~~Enterprise zones: City of Fremont.~~
Corporation tax credit: automobile manufacturing.

The Corporation Tax Law authorizes various credits against the taxes imposed by that law.

This bill would, for taxable years beginning on or after January 1, 2010, allow to a qualified taxpayer, as defined, a credit, not to exceed \$10,000,000, for specified percentages of qualified expenditures, as defined. In general, the credit would be allowed to automobile manufacturers in this state that employ a specified number of qualified employees, as provided.

This bill would take effect immediately as a tax levy.

~~Existing law, the Enterprise Zone Act, provides for the designation of enterprise zones by the Department of Community Housing and Development, based on the department's approval of applications from a city, county, or city and county with a geographic area meeting certain criteria. Certain entities within a designated enterprise zone may receive regulatory, tax, and other incentives for private investment and employment.~~

~~This bill would, notwithstanding any other law, require the department to, upon application by the Fremont City Council, designate one enterprise zone within the geographic area of the City of Fremont.~~

~~This bill would declare that is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 23606 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 23606. (a) (1) For each taxable year beginning on or after
- 4 January 1, 2010, there shall be allowed to a qualified taxpayer a
- 5 credit against the "tax," as defined by Section 23036, in an amount
- 6 equal to the amount determined in subdivision (b).
- 7 (2) The amount of the credit allowed by this section to a
- 8 qualified taxpayer for a taxable year shall not exceed ten million
- 9 dollars (\$10,000,000).
- 10 (3) For taxable years beginning on or after January 1, 2010,
- 11 and before January 1, 2013, the credit under this section shall be
- 12 claimed by a qualified taxpayer on an amended return filed with
- 13 the Franchise Tax Board on or after January 1, 2013, but no credit
- 14 shall be allowed unless the qualified taxpayer is a qualified
- 15 taxpayer for the taxable year beginning on or after January 1,
- 16 2013.
- 17 (b) The amount of the credit determined under this subdivision
- 18 shall be:
- 19 (1) Thirty percent of the qualified expenditures paid or incurred
- 20 during the taxable year by a qualified taxpayer that employs an
- 21 average of 4,000 or more qualified employees during the taxable
- 22 year.

1 (2) *Twenty-five percent of the qualified expenditures paid or*
2 *incurred during the taxable year by a qualified taxpayer that*
3 *employs an average of at least 3,900 but not more than 3,999*
4 *qualified employees during the taxable year.*

5 (3) *Twenty percent of the qualified expenditures paid or incurred*
6 *during the taxable year by a qualified taxpayer that employs an*
7 *average of at least 3,800 but not more than 3,899 qualified*
8 *employees during the taxable year.*

9 (4) *Fifteen percent of the qualified expenditures paid or incurred*
10 *during the taxable year by a qualified taxpayer that employs an*
11 *average of at least 3,700 but not more than 3,799 qualified*
12 *employees during the taxable year.*

13 (5) *Ten percent of the qualified expenditures paid or incurred*
14 *during the taxable year by a qualified taxpayer that employs an*
15 *average of at least 3,600 but not more than 3,699 qualified*
16 *employees during the taxable year.*

17 (6) *Five percent of the qualified expenditures paid or incurred*
18 *during the taxable year by a qualified taxpayer that employs an*
19 *average of at least 3,500 but not more than 3,599 qualified*
20 *employees during the taxable year.*

21 (c) *For purposes of this section:*

22 (1) (A) *“Qualified taxpayer” means a taxpayer engaged in*
23 *automobile manufacturing in California that employs an average*
24 *of 3,500 or more qualified employees as determined on an annual*
25 *basis.*

26 (B) (i) *The number of average qualified employees employed*
27 *by a taxpayer during a taxable year shall be determined by dividing*
28 *the total number of hours for which qualified employees of the*
29 *taxpayer were paid qualified wages by 2000.*

30 (ii) *For purposes of this calculation, a full-time salaried*
31 *qualified employee shall be treated as being paid for 40 hours per*
32 *week.*

33 (iii) *For a taxable year of less than 12 months, “2000” in clause*
34 *(i) shall be multiplied by a fraction equal to the number of months*
35 *in the taxable year divided by 12.*

36 (2) *“Qualified expenditures” means:*

37 (A) *Amounts paid or incurred to purchase or lease qualified*
38 *property used within this state for automobile manufacturing.*

1 (B) Amounts paid or incurred for payment of qualified wages
2 for services performed within this state for automobile
3 manufacturing.

4 (3) “Qualified property” means:

5 (A) Tangible personal property, within the meaning of Section
6 1245 of the Internal Revenue Code, used by a qualified taxpayer
7 engaged in the automobile manufacturing within the state that is
8 primarily used for any of the following:

9 (i) For automobile manufacturing, beginning at the point at
10 which any raw materials are received by the qualified taxpayer
11 and introduced into the process and ending at the point at which
12 the manufacturing has altered tangible personal property to its
13 completed form, including packaging, if required.

14 (ii) To maintain, repair, measure, or test any property described
15 in this paragraph.

16 (iii) For pollution control that meets or exceeds standards
17 established by the state or any local or regional governmental
18 agency within the state.

19 (iv) For recycling.

20 (B) The value of any capitalized labor costs that are directly
21 allocable to the construction or modification of property described
22 in this paragraph that are not qualified wages.

23 (C) Special purpose buildings and foundations that are
24 constructed or modified for use by the qualified taxpayer primarily
25 in automobile manufacturing.

26 (i) For purposes of this subparagraph, “special purpose building
27 and foundations” means only a building and the foundation
28 immediately underlying the building that is specifically designed
29 and constructed or reconstructed for the installation, operation,
30 and use of specific machinery and equipment with a special
31 purpose, which machinery and equipment, after installation, will
32 become affixed to or a fixture of the real property, and the
33 construction or reconstruction of which is specifically designed
34 and used exclusively for automobile manufacturing.

35 (ii) A building is specifically designed and constructed or
36 modified for automobile manufacturing if it is not economical to
37 design and construct the building for the intended purpose and
38 then use the structure for a different purpose.

39 (iii) For purposes of clause (i) and clause (vi), a building is
40 used exclusively for automobile manufacturing only if its use does

1 *not include a use for which it was not specifically designed and*
2 *constructed or modified. Incidental use of a building for*
3 *nonqualified purposes does not preclude the building from being*
4 *a special purpose building. "Incidental use" means a use which*
5 *is both related and subordinate to the qualified purpose. It will be*
6 *conclusively presumed that a use is not subordinate if more than*
7 *one-third of the total usable volume of the building is devoted to*
8 *a use which is not automobile manufacturing.*

9 *(iv) If an entire building does not qualify as a special purpose*
10 *building, a taxpayer may establish that a portion of a building,*
11 *and the foundation immediately underlying the portion, qualifies*
12 *for treatment as a special purpose building and foundation if the*
13 *portion otherwise qualifies as special purpose building and*
14 *foundation.*

15 *(v) To the extent that a building is not a special purpose building*
16 *as defined above, but a portion of the building qualifies for*
17 *treatment as a special purpose building, then all equipment which*
18 *exclusively supports the automobile manufacturing occurring*
19 *within that portion and which would qualify as Internal Revenue*
20 *Code Section 1245 property if it were not a fixture or affixed to*
21 *the building shall be treated as a cost of the portion of the building*
22 *which qualifies for treatment as a special purpose building.*

23 *(vi) Buildings and foundations which do not meet the definition*
24 *of a special purpose building and foundation set forth above*
25 *include, but are not limited to, any of the following:*

26 *(I) Buildings designed and constructed or reconstructed*
27 *principally to function as a general purpose manufacturing,*
28 *industrial, or commercial building.*

29 *(II) Research facilities that are used primarily prior to or after,*
30 *or prior to and after, the manufacturing process.*

31 *(III) Storage facilities that are used primarily prior to or after,*
32 *or prior to and after, completion of the manufacturing process.*

33 *(D) Qualified property also includes computer software that is*
34 *primarily used to operate tangible personal property as defined*
35 *in subparagraph (A) of this subdivision.*

36 *(E) Qualified property does not include any of the following:*

37 *(i) Furniture.*

38 *(ii) Facilities used for warehousing purposes after completion*
39 *of the manufacturing process.*

40 *(iii) Inventory.*

1 (iv) *Equipment used to store finished products that have*
2 *completed the manufacturing process.*

3 (v) *Any tangible personal property that is used in administration,*
4 *general management, or marketing.*

5 (4) (A) *“Qualified wages” means any wages required to be*
6 *reported under Section 13050 of the Unemployment Insurance*
7 *Code that were paid or incurred by a qualified taxpayer with*
8 *respect to a qualified employee.*

9 (B) *“Qualified wages” shall not include wages related to*
10 *financing, overhead, marketing, distribution, or sales of completed*
11 *automobiles.*

12 (5) *“Qualified employee” means any individual employed by*
13 *the qualified taxpayer who performs services for the qualified*
14 *taxpayer at an automobile manufacturing plant during the taxable*
15 *year, and whose wages are required to be reported under Section*
16 *13050 of the Unemployment Insurance Code.*

17 (6) *“Automobile manufacturing” means the manufacture of*
18 *new vehicles as defined in Section 430 of the Vehicle Code that*
19 *are passenger vehicles as defined in Section 465 of the Vehicle*
20 *Code.*

21 (d) (1) *No credit shall be allowed for the purchase of qualified*
22 *property if the qualified property is removed from the state, is*
23 *disposed of, or is used for any purpose other than automobile*
24 *manufacturing in the same taxable year in which the qualified*
25 *property is first placed in service within this state.*

26 (2) *If any qualified property for which a credit is allowed*
27 *pursuant to this section is thereafter removed from this state,*
28 *disposed of, or used for any purpose other than automobile*
29 *manufacturing within one year from the date the qualified property*
30 *is first placed in service in this state, the amount of the credit*
31 *allowed by this section for that qualified property shall be*
32 *recaptured by adding that credit amount to the net tax of the*
33 *qualified taxpayer for the taxable year in which the qualified*
34 *property is disposed of, removed, or put to an ineligible use.*

35 (e) *In the case where the credit otherwise allowable under this*
36 *section exceeds the “tax,” that portion of the credit which exceeds*
37 *the “tax” may be carried over and added to the credit, if any, in*
38 *the following year, and succeeding years if necessary, until the*
39 *credit is exhausted.*

1 (f) Section 23663 shall not apply to the credit allowed by this
2 section.

3 (g) No deduction or other credit shall be allowed under this
4 part or Part 10 (commencing with Section 17001) to the extent of
5 any qualified expenditures, as defined in subdivision (c), that are
6 taken into account in computing the credit allowable under this
7 section.

8 (h) (1) A qualified taxpayer may make an irrevocable election
9 to have this section not apply for any taxable year.

10 (2) (A) For taxable years beginning on or after January 1,
11 2013, the election under paragraph (1) shall be made on a timely
12 filed original return.

13 (B) For taxable years beginning on or after January 1, 2010,
14 and before January 1, 2013, a qualified taxpayer shall be deemed
15 to have made an election to have this section not apply by failing
16 to file an amended return on or after January 1, 2013, in
17 accordance with paragraph (3) of subdivision (a).

18 SEC. 2. This act provides for a tax levy within the meaning of
19 Article IV of the Constitution and shall go into immediate effect.

20 SECTION 1. ~~Section 7073.5 is added to the Government Code,~~
21 ~~to read:~~

22 ~~7073.5. (a) Notwithstanding any other law, the department~~
23 ~~shall, upon application by the Fremont City Council, designate~~
24 ~~one enterprise zone within the geographic area of the City of~~
25 ~~Fremont pursuant to this section.~~

26 ~~(b) For purposes of applying any provision of the Revenue and~~
27 ~~Taxation Code, the enterprise zone designated pursuant to this~~
28 ~~section shall be deemed to have been designated pursuant to the~~
29 ~~Enterprise Zone Act.~~

30 ~~(c) The enterprise zone designated under this section shall not~~
31 ~~be included in the calculation of the overall number of enterprise~~
32 ~~zones authorized under the Enterprise Zone Act.~~

33 ~~SEC. 2. Due to the unique circumstances of the City of~~
34 ~~Fremont, with respect to the need for sustained employment and~~
35 ~~business development in the area, the Legislature hereby finds and~~
36 ~~declares that a general statute cannot be made applicable within~~
37 ~~the meaning of Section 16 of Article IV of the California~~
38 ~~Constitution. Therefore, the special legislation contained in Section~~
39 ~~1 of this act is necessarily applicable only to the City of Fremont.~~

1 ~~SEC. 3. This act is an urgency statute necessary for the~~
2 ~~immediate preservation of the public peace, health, or safety within~~
3 ~~the meaning of Article IV of the Constitution and shall go into~~
4 ~~immediate effect. The facts constituting the necessity are:~~
5 ~~To encourage economic development and stability by allowing~~
6 ~~the creation of an enterprise zone within the City of Fremont as~~
7 ~~quickly as possible, it is necessary for this bill to go into immediate~~
8 ~~effect.~~

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